IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10207 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA DISTRICT CENTRAL CO-OPERATIVE BANK LTD.

Versus

HARSHI OR HIS SUCCESSOR IN OFFICE

Appearance:

1. Special Civil Application No. 10207 of 2001

MR KG VAKHARIA with MR TUSHAR MEHTA for
Petitioners No. 1-2

MR KAMAL B TRIVEDI, ADDL. ADVOCATE GENERAL with
MR AD OZA, GOVERNMENT PLEADER for Respondents No. 1-2

RULE SERVED BY DS for Respondents No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/01/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioners challenge the order dated

25.10.2001 passed by the Joint Registrar (Credit), Cooperative Societies, Gujarat State (hereinafter referred to as `respondent No. 1') rejecting the petitioners' application for raising preliminary issues in the proceedings under Section 76B of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as `the Act').

2. Respondent No.1 issued notice dated 6.8.1998 calling upon petitioner No. 2, the then Chairman and the present Chairman of petitioner No.1-District Cooperative Bank to show cause why petitioner No. 2 should not be removed from the said office and also why petitioner No. 2 should not be disqualified from holding any office in petitioner No.1-society for a period not exceeding four years from the date of the order. The said notice came to be challenged by the petitioners in Special Civil Application No. 6704 of 1998 on various grounds including the challenge to the authority or jurisdiction to initiate such proceedings under Section 76B of the Act on the ground that the notice under Section 76B of the Act was issued in respect of the alleged acts of omission and commission during the tenure prior to 1998 and that petitioner No. 2 was subsequently re-elected as Chairman of petitioner No.1-bank on 12.7.1998. It was further contended that the notice was bad on the ground of mala fides. When the said petition came up for preliminary hearing before this Court, this Court dismissed the petition only on the ground that it was premature as it was against a show cause notice only and petitioner No. 2 was given an opportunity of showing cause and raising all available contentions. This Court accordingly dismissed the petition with an observation that it was open to the petitioners to raise all available contentions including the contention about the lack of authority or jurisdiction and the contention on the ground of mala fides. Further, the Court accepted the request made on behalf of the petitioners that if any order adverse to petitioner No. 2 were to be passed by the authorities, the same would not be implemented for a period of two weeks from the date of despatch of the order by RPAD. That order dated 9.8.2001 passed by this Court came to be challenged in Letters Patent Appeal No. 782 of 2001. The Letters Patent Bench also declined to entertain the appeal on the basis that all the grounds of challenge including the contention based on lack of jurisdiction can be raised by petitioners before the concerned authorities inquiring into the charges. The Letters Patent Bench disposed of the appeal with the following observations :-

"4. In our opinion, all the grounds based on lack of jurisdiction can be raised by the petitioner before the concerned authorities inquiring into the charges. It is open to the petitioner to raise grounds as preliminary issues or issues with further evidence based on record. If such preliminary issues of jurisdiction are raised, it will be open to the concerned authorities to try them as preliminary issues if no evidence is required on such issues, except interpretation of the provisions of the Act. He may, however, decide those issues with others if evidence is required. With the above observations, both the Letters Patent Appeal and the Civil Application are disposed of."

(emphasis supplied)

3. After disposal of the Letters Patent Appeal on 17.8.2001, petitioner No. 2 submitted application dated 23.10.2001 before respondent No. 1 raising the following preliminary contentions :-

(i) Whether respondent No. 1 had jurisdiction to initiate proceedings under Section 76B of the Act in respect of the tenure prior to re-election of petitioner No. 2 as Chairman of petitioner No.1-bank on 12.7.1988.

(ii) Whether the notice dated 6.8.1988 has become infructuous upon fresh elections of the Chairman and Directors of petitioner No.1-bank (held in August, 2001).

Respondent No. 1 rejected the said application by the impugned order dated 25.10.2001 (Annexure "A") which is under challenge in this petition.

4. Mr KG Vakharia, learned counsel for the petitioners has submitted that after recording the submissions made on behalf of petitioner No. 2 and referring to the decision of this Court in Kantilal C. Shah vs. C.J. Jose, 1987(1) GLR 603, respondent No. 1 has not given any reason whatsoever for rejecting the application for raising preliminary issues and that respondent No.1 did not at all consider the observation made by the Letters Patent Bench that if preliminary issues of jurisdiction are raised, the authorities were expected to try them as preliminary issues if no evidence is required on such issues.

5. On the other hand, Mr KB Trivedi, learned Additional Advocate General appearing for respondent Nos. 1 and 2 submits that the Letters Patent Bench did not issue any mandate to respondent No. 1 to try the issues sought to be raised by the petitioners as preliminary issues and that the discretion was conferred on the authorities. If the issues required evidence, then, of course, there would be no question of trying them as preliminary issues but even if the issues raised by the petitioners did not require any evidence to be led, even then the concerned authorities had jurisdiction to decide whether to try them as preliminary issues. It is submitted that respondent No. 1 rightly exercised the discretion not to try the aforesaid issues as preliminary issues because the matter is pending since last more than three years and deciding the aforesaid issues as preliminary issues would only add one more round of litigation further protracting the proceedings under Section 76B of the Act which are required to be completed expeditiously in view of the fact that serious charegs are made against petitioner No. 2 regarding investment of crores of rupees in certain concerns like CRB Capital, which investments have become dead investments in the sense that nothing has come back to petitioner No. 1 from out of those investments and huge amounts running into crores of rupees have been lost to petitioner No.1-bank.

6. Having heard the learned counsel for the parties and having regard to the observation made by the Letters Patent Bench in the order dated 17.8.2001 in Letters Patent Appeal No. 782 of 2001 and also having regard to the apprehensions raised by the learned Additional Advocate General, it appears to the Court that the interests of justice would be served if the petition is disposed of in terms of the following directions :-

(i) Respondent No. 1 shall try and decide the two preliminary issues proposed by petitioner No. 1 as recorded in the impugned order dated 25.10.2001 as expeditiously as possible and preferably by 28.2.2002.

(ii) If the finding on the aforesaid preliminary issues is in favour of petitioner No. 2, then, of course, nothing further will be required to be done in the matter. If, however, the finding on the preliminary issues is against petitioner No. 2, respondent No. 1 shall proceed further on merits of the inquiry under Section 76B of the Act after giving a reasonable opportunity of

hearing to petitioner No. 2.

(iii) In case the final order pursuant to such inquiry is adverse to petitioner No. 2, the same shall not be implemented for a period of two weeks from the date of despatch of the decision to petitioner No. 2 by RPAD.

(iv) It is intended that in case the finding on the preliminary issues is against petitioner No. 2, the inquiry under Section 76B shall proceed on merits. Hence, if for any reason such adverse decision on preliminary issues is challenged, the benefit of direction contained in para (iii) hereinabove shall not be available to petitioner No. 2 and the authorities shall be entitled to implement the decision straightaway.

(v) This arrangement, however, does not prevent petitioner No. 2 from collecting evidence on merits at this stage.

It is directed accordingly.

7. The petition is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent only with no order as to costs.

Ad-interim relief granted earlier stands vacated.

(M.S. Shah, J.)
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